

1 STATE OF NEW YORK : NASSAU COUNTY

2 COUNTY COURT PART 11

3 - - - - -X

4 THE PEOPLE OF THE STATE OF NEW YORK, SCI/IND. NO.
167N-2005

5 -against-

6 MARK ORLANDO, TRIAL

7 Defendant.

8 - - - - -X

9 262 Old Country Road
Mineola, New York
10 June 9, 2005

11

12 B e f o r e :

13 HON. DAVID P. SULLIVAN, Supreme Court Justice

14 A p p e a r a n c e s :

15

16 HON. DENIS DILLON
17 District Attorney, Nassau County
By: ROBERT T. HAYDEN, ESQ.
18 Assistant District Attorney

19

20 DENNIS LEMKE, ESQ.
Attorney for Defendant
114 Old Country Road
21 Mineola, New York 11501

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Mary Ocskai
Official Court Reporter

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Proceedings

1 THE CLERK: Continued case on trial, 167N-05,
2 People of the State of New York versus Mark Orlando.

3 Appearances for the record.

4 MR. HAYDEN: Robert T. Hayden for the People.
5 People are ready.

6 THE CLERK: For the defense.

7 MR. LEMKE: For Mr. Orlando, Dennis Lemke, 114
8 Old Country Road, Mineola, New York.

9 THE CLERK: Let the record reflect the
10 presence of Mr. Orland, sworn jurors and alternates.

11 THE COURT: Thank you for your patience. I
12 moved to another courtroom hoping it'd be a little
13 cooler. I apologize for that.

14 Mr. Hayden, call your next witness, please.

15 MR. HAYDEN: Detective John McHugh.

16 JOHN MCHUGH, detective, called as a witness on behalf of the
17 People, after having been first duly sworn, and having
18 stated his shield number as 624, and his command as the
19 Homicide Squad, Nassau County Police Department, took the
20 witness stand and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HAYDEN:

23 THE CLERK: State your name, spelling your
24 last, shield number and command.

25 THE WITNESS: Detective John McHugh,

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McHugh - People - Direct

1 M-C-H-U-G-H, shield 624, Homicide Squad, Nassau County
2 Police.

3 THE COURT: Good morning, detective.

4 THE WITNESS: Good morning, detective.

5 THE COURT: Mr. Hayden.

6 MR. HAYDEN: Yes, Your Honor.

7 Q. Goods morning, detective.

8 A. Good morning, Mr. Hayden.

9 Q. How long have you been a member of the Nassau
10 County Police Department?

11 A. Thirty years.

12 Q. How long have you been a detective?

13 A. Seventeen years.

14 Q. How long with homicide?

15 A. Eight years.

16 Q. Do you know a man named Mark Orlando?

17 A. Yes, I do.

18 Q. Please briefly describe him?

19 A. He is a male white, he was thirty-four years old at
20 the time of this case. He is approximately 5'10", about 175
21 pounds.

22 Q. Do you see Mark Orlando in this courtroom today?

23 MR. LEMKE: So stipulated, Your Honor,
24 Mr. Mark Orlando.

25 THE COURT: Let the record reflect that the

McHugh - People - Direct

1 witness has identified the defendant as Mark Orlando.

2 Q. Do you know a young man named Herva Jeannot?

3 A. Yes, I do.

4 Q. Please briefly describe Herva Jeannot?

5 A. Male black, twenty-three years of age, about 5'9"
6 with a thin built.

7 Q. Where was Herva Jeannot living in early December of
8 2004?

9 A. 159 Sammis avenue in Deer Park, New York.

10 Q. With whom was Herva Jeannot living with then?

11 A. His parents.

12 Q. I am directing your attention to the night of
13 Friday, December 3, 2004.

14 Did you become involved that night with investigating the
15 shooting death of a young man named Bobby Calabrese?

16 A. Yes, I did.

17 Q. When was Bobby Calabrese killed?

18 A. Approximately 8:26 pm

19 Q. When was the first 911 call received?

20 A. [REDACTED]

21 Q. Where was Bobby Calabrese killed?

22 A. In the roadway on Broadway south of Georgia Avenue
23 in North Long Beach.

24 Q. Did you respond to that location?

25 A. Yes, I did.

McHugh - People - Direct

1 O [REDACTED]

2 A [REDACTED]

3 Q. Describe the area where Bobby was killed?

4 A. It's a commercial area that's dimly lit. On the
5 west side of the street is a large public storage facility, a
6 limousine business, an auto repair shop. Further north on
7 the street, on the corner of Georgia Avenue is a 7-Eleven.
8 On the east side of Broadway is a boat yard and a vacant
9 nightclub.

10 Q. Was the storage facility open for business when
11 Bobby was killed?

12 A. No, it was not.

13 Q. Was the limo business open when Bobby was killed?

14 A. No, it was not.

15 Q. How did you determine that?

16 A. Through our canvass and walking around the
17 neighborhood, trying to make contact with people in those
18 establishments.

19 Q. Were you familiar with the area where Bobby was
20 killed?

21 A. Yes, I was.

22 Q. Describe your familiarity with that area?

23 A. I was a police officer and a detective in the
24 precinct that covers that area for twenty years.

25 Q. Is that the Fourth Precinct?

McHugh - People - Direct

1 A. Yes, it is.

2 Q. Did you see an Infiniti automobile when you arrived
3 at that area?

4 A. Yes, I did.

5 Q. Where was the Infiniti?

6 A. It was parked at the curb line on Broadway facing
7 north.

8 Q. Describe any observations you made of that
9 Infiniti?

10 A. It was parked with its engine running and its
11 headlights on.

12 Q. Did you see Bobby's body?

13 A. Yes, I did.

14 Q. Where was Bobby's body?

15 A. In the roadway, at the rear, several feet away from
16 his automobile.

17 Q. Was he the registered owner?

18 A. Yes, he was.

19 Q. Describe any observations you made of Bobby's
20 body?

21 A. He was lying in the roadway, face down, with his
22 arms up in front of his head when, I mean, they were on the
23 ground but up in front of his head. His head was facing in a
24 southwesterly direction. He was lying in a pool of blood.
25 He was fully cloth, wearing a gray sweat shirt that had been

McHugh - People - Direct

1 cut up the back.

2 Q. Were you present when Dr. Brian O'Reilly arrived in
3 the area?

4 A. Yes, I was.

5 Q. Were you present when Dr. O'Reilly turned over
6 Bobby's body?

7 A. Yes.

8 Q. Did Dr. O'Reilly recovered evidence in the upper
9 chest area of Bobby's body?

10 A. Yes.

11 Q. What did he recover?

12 A. A copper bullet jacketing.

13 Q. What did he do with it?

14 A. Turned it over to the crime scene detective,
15 Detective Nystrom.

16 Q. Was a cell phone recovered from Bobby's clothing?

17 A. Yes, it was.

18 Q. Where?

19 A. The front pocket of his sweat shirt.

20 Q. Was any money recovered from Bobby's clothing?

21 A. Yes, it was.

22 Q. What?

23 A. \$20.

24 Q. Where?

25 A. Right front pocket of his sweat pants.

McHugh - People - Direct

1 Q. Was any money eventually recovered from inside the
2 Infiniti?

3 A. Yes.

4 Q. Where was the Infiniti when money was recovered?

5 A. It was being processed in the Nassau County police
6 facility on Newbridge Road in Bellmore.

7 Q. How much money was recovered?

8 A. \$39.

9 Q. Where was the \$39?

10 A. In the victim's wallet.

11 Q. Where was that?

12 A. In the area of the console of the Infiniti.

13 Q. Was any money recovered in the vicinity of Bobby's
14 body?

15 A. No.

16 Q. Was any money recovered in the vicinity of the
17 Infiniti?

18 A. No.

19 Q. Was any weapon recovered from Bobby's clothing?

20 A. No.

21 Q. Was any weapon recovered from the Infiniti?

22 A. None.

23 Q. Was any weapon recovered in the vicinity of Bobby's
24 body?

25 A. No.

McHugh - People - Direct

1 Q. Was any weapon recovered in the vicinity of the
2 Infiniti?

3 A. No:

4 Q. Was any DNA fingerprint or other forensic evidence
5 recovered at the scene of the murder?

6 A. No, there was not.

7 Q. Were you eventually informed of autopsy results
8 involving Bobby Calabrese?

9 A. Yes, I was.

10 Q. When was the autopsy performed?

11 A. [REDACTED]

12 Q. When were you informed of the results?

13 A. On the afternoon of the autopsy, December fourth.

14 [REDACTED]

15 [REDACTED]

16 A. No, they were not.

17 Q. Was there a cell site tower in the vicinity of the
18 shooting?

19 A. Yes.

20 Q. What do you mean by a cell site tower?

21 A. It's a tower that facilitates equipment that's
22 placed there by the cell phone companies to allow for the
23 reception of ingoing and outgoing cell phone calls.

24 Q. Where was the closest cell site tower to the
25 vicinity of the murder?

McHugh - People - Direct

1 A. North of the scene, about a half mile.

2 Q. Did you become familiar with telephone numbers
3 while investigating Bobby's death?

4 A. Yes, I did.

5 Q. Did you become familiar with the cell phone number
6 [REDACTED]

7 A. Yes, I did.

8 Q. Whose cell phone number was that on the night of
9 the shooting?

10 A. The defendant's [REDACTED]

11 Q. Did you become familiar with the cell number [REDACTED]
12 [REDACTED]

13 A. Yes, I did.

14 Q. Whose cell phone number was that on the night of
15 the shooting?

16 A. The victim's [REDACTED]

17 Q. Did you become familiar with the telephone number
18 [REDACTED]

19 A. Yes, I did.

20 Q. Whose telephone number was that on the night of the
21 shooting?

22 A. It's the phone number of the [REDACTED]
23 dealership on Sunrise Highway in Wantagh.

24 Q. Did you become familiar with the cell number [REDACTED]
25 [REDACTED]

McHugh - People - Direct

1 A. Yes. That is the cell phone number for [REDACTED].

2 Q. Did you become familiar with the cell phone number

3 [REDACTED]

4 A. Yes. That is the cell phone number for [REDACTED]

5 [REDACTED]

6 Q. Did you become familiar with the telephone number.

7 [REDACTED]

8 A. Yes. That is the home telephone number of [REDACTED]

9 [REDACTED]

10 Q. Are you familiar with a business called Puma's?

11 A. Yes.

12 Q. What is Puma's?

13 A. It's an auto body repair shop.

14 Q. Where is Puma's?

15 A. It's located on the west side of Austin Boulevard
16 in North Long Beach, backs up to Industrial Place.

17 Q. Where is Puma's in relation to the scene of the
18 murder?

19 A. It's about three quarters to a mile southwest and
20 across Austin Boulevard from the scene.

21 Q. Are you familiar with a place called McCabe's?

22 A. Yes, I am.

23 Q. What is McCabe's?

24 A. It used to be a restaurant in North Long Beach.

25 Q. What was it on the night of the murder?

McHugh - People - Direct

1 A. It was empty. It had shut down.

2 Q. Where is McCabe's?

3 A. That too is also southwest of the scene, across
4 Austin Boulevard, and it also backs up to Industrial Place.

5 MR. HAYDEN: Your Honor, may I please have 33
6 and 34 in evidence shown to the witness.

7 THE COURT: Yes.

8 THE COURT OFFICER: The witness has People's
9 33 and 34 in evidence.

10 Q. Do you recognize those photographs?

11 A. Yes, I do.

12 Q. Are those photographs of the vicinity where the
13 murder took place?

14 A. Yes, they are.

15 Q. Do the vicinities covered in those photographs
16 include the locations of Puma's and McCabe's?

17 A. Yes, they are.

18 Q. Both?

19 A. Yes, they do.

20 MR. HAYDEN: May I please have these markers
21 given to the detective.

22 THE COURT: Yes.

23 Q. Detective, do you see markers designated Puma's and
24 McCabe's?

25 A. Yes, I do.

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1 Q. Would you please take one of those markers for both
2 McCabe's and Puma's and place them at the approximate
3 locations of those locations as they are in those
4 photographs?

5 A. Yes.

6 MR. HAYDEN: May I have those, please.

7 Thank you.

8 Q. Did you become aware that Bobby was shot three
9 times in the back of the head?

10 A. Yes, I did.

11 Q. When did you become aware of that?

12 A. After the autopsy, in the afternoon of December
13 fourth.

14 Q. How did you become aware of that?

15 A. I was advised by Detective Pongee, P.A.B.P.P.,
16 the homicide squad who attended the autopsy.

17 Q. Was that public knowledge on the morning of
18 Saturday, December 4, 2004?

19 A. No, it was not.

20 Q. Did you watch a videotape during the course of the
21 investigation?

22 A. Yes, I did.

23 Q. When did you watch the videotape?

24 A. Saturday, December fourth.

25 Q. Where was the videotape obtained?

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1 A. It was obtained from the public storage, on
2 Broadway, just south of the scene.

3 Q. By Detective Kenneth Strigaro of the electronics
4 unit?

5 A. Yes.

6 Q. Describe that videotape?

7 A. The videotape showed it was a digital system that
8 showed two cameras, surveillance cameras that were mounted on
9 the rear of the facility. One camera facing directly east
10 out the driveway of the facility onto Broadway, and the
11 second camera facing in a northeasterly direction over the
12 rear of the building also facing Broadway.

13 Q. Did you watch the videotape?

14 A. Yes, I did.

15 Q. Did you have a photograph of a Suzuki Verona
16 automobile while watching the videotape?

17 A. Yes.

18 Q. Where did you get it?

19 A. Off the Internet of the Suzuki web site.

20 MR. HAYDEN: May I please have this marked as
21 62 for identification and shown to the detective.

22 THE COURT OFFICER: People's 62 marked for
23 ID.

24 The witness has 62 for identification.

25 Q. Do you recognize that?

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1 A. Yes, I do.

2 Q. Is that the photograph you had while watching the
3 videotape?

4 A. It's a photograph I looked at in conjunction with
5 the videotape, yes.

6 Q. Were you with Detective Strigaro while watching the
7 videotape?

8 A. Yes.

9 MR. HAYDEN: People offer that, Your Honor, as
10 62 in evidence.

11 MR. LEMKE: No objection, Your Honor. We have
12 seen it.

13 THE COURT: 62 in evidence.

14 THE COURT OFFICER: People's 62 in evidence.

15 Do you want it shown back to the witness?

16 MR. HAYDEN: No, thank you.

17 Q. Were photographs taken of a Suzuki Verona during
18 the course of the investigation?

19 A. Yes.

20 Q. Whose Suzuki Verona was that?

21 A. Automobile was owned by Mark Orlando's wife.

22 MR. HAYDEN: May I please have three
23 photographs marked, Your Honor, 63, 64 and 65 for
24 identification.

25 THE COURT: Yes.

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1 THE COURT OFFICER: People's 63, 64 and 65
2 marked for identification.

3 The witness has them.

4 Q. Do you recognize those photographs?

5 A. Yes, I do.

6 Q. Are those photographs of the defendant's wife's
7 Suzuki Verona?

8 A. Yes, they are.

9 Q. Are those photographs fair and accurate
10 representations of the way the Suzuki Verona appeared after
11 Bobby was murdered?

12 A. Yes.

13 MR. HAYDEN: People's offer those in evidence,
14 Your Honor.

15 MR. LEMKE:

16 MR. LEMKE: No objection, Your Honor.

17 THE COURT: Mark them in evidence.

18 THE COURT OFFICER: People's 63, 64, and 65
19 marked in evidence.

20 Want them shown back to the witness?

21 MR. HAYDEN: No, thank you.

22 Q. I am directing your attention to the night of
23 Thursday, December 9, 2004.

24 Were you involved that night in arresting the defendant?

25 A. Yes, I was.

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1 Q. What was the approximate time the defendant was
2 arrested?

3 A. 9:10 p.m.

4 Q. Who arrested him?

5 A. Police Officer Loschiavo and Police Officer
6 McCarthy of the Bureau of Special Operations.

7 Q. Where was the defendant arrested?

8 A. In the parking lot of the Airport Plaza Mall in
9 Farmingdale.

10 Q. Where was that in relation to Professional Credit
11 Services?

12 A. It's not far from there, right off of 110.

13 Q. Where were you when the defendant was arrested?

14 A. I was present when he was arrested.

15 Q. What did you see when the defendant was arrested?

16 A. I saw him removed from his automobile and
17 handcuffed by the arresting officers after his automobile had
18 been stopped by them.

19 Q. What did the officers do with the defendant after
20 they arrested him?

21 A. Turned him over to myself and Detective McGinn.

22 Q. Is that Detective James McGinn?

23 A. Yes, it is.

24 Q. What did you and Detective McGinn do with the
25 defendant?

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1 A. Placed him in our unmarked police vehicle.

2 Q. Describe that vehicle?

3 A. It's a 1997 Ford Expedition.

4 Q. Where did you take the defendant?

5 A. Took him to the homicide squad at police
6 headquarters in Mineola.

7 Q. Who was driving?

8 A. Detective McGinn.

9 Q. Where were you?

10 A. Seated in the rear behind Detective McGinn.

11 Q. Where was the defendant?

12 A. Seated next to me in the rear seat.

13 Q. Describe any conversation on the way to police
14 headquarters?

15 A. When we first got situated in the vehicle with the
16 prisoner, I introduced myself and Detective McGinn to him,
17 told him I wanted to speak to him about the death of Bobby
18 Calabrese, that we would be responding to police headquarters
19 in Mineola, I would speak to him when we got there.

20 Q. What was his response?

21 A. He said okay.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Q. Was Herva Jeannot arrested that night?

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1 A. Yes, he was.

2 Q. Where was Herva Jeannot arrested?

3 A. Also arrested in Farmington.

4 Q. Vicinity of Professional Credit Services?

5 A. His place of employment, yes.

6 Q. Was that at approximately 9:15 that Thursday night?

7 A. Yes.

8 Q. Was Herva Jeannot brought to the homicide squad?

9 A. Yes, he was.

10 Q. What was the approximate time he arrived?

11 A. 10:15 p.m.

12 Q. Where did you place the defendant at the homicide
13 squad?

14 A. In an interview room in the homicide squad office.

15 Q. Describe that room?

16 A. It's a room designated for interview purposes.

17 It's approximately ten feet by ten feet. Has a desk, three
18 chairs, a window, a door that has a window on it that is
19 covered by drapes.

20 Q. Where was Herva Jeannot placed?

21 A. He was placed in a chair in that office, interview
22 room.

23 Q. Describe the room where Herva Jeannot was placed?

24 A. Herva Jeannot was placed in a second interview room
25 which is located on the other side of the office. That is a

McHugh - People - Direct

1 room about ten feet by twelve feet, has a desk, two chairs,
2 and a lounge.

3 Q. How far was the defendant from Herva Jeannot?

4 A. About forty feet.

5 Q. Did you eventually again speak with the defendant?

6 A. Yes, I did.

7 Q. Who was present when you began speaking with the
8 defendant?

9 A. Detective McGinn.

10 Q. Was the defendant handcuffed when you began
11 speaking with him?

12 A. No, he was not.

13 Q. When were the handcuffs removed?

14 A. I say approximately ten p.m., about ten minutes
15 before we started speaking to him, after we got situated in
16 the office.

17 Q. Describe any initial conversation with the
18 defendant?

19 A. I once again introduced myself and Detective
20 McGinn, told him that we were going to speak about the death
21 of Bobby Calabrese, and I told him at that point I was going
22 to give him his rights and to pay attention.

23 Q. Did you do that?

24 A. Yes, I did.

25 Q. What time did you inform the defendant of his

McHugh - People - Direct

1 constitutional rights?

2 A. 10:10 p.m.

3 Q. Describe how you did that?

4 A. I read them off of a card, a police department form
5 233 notification of rights.

6 Q. Were markings eventually placed on that card?

7 A. Yes, there were.

8 Q. Describe those marks?

9 A. Next to the question, do you understand, the
10 defendant wrote the word yes. He signed his name on two
11 spots on the card. I signed the card, Detective McGinn
12 signed the card, the homicide squad number, and the date on
13 the card also.

14 MR. HAYDEN: May I please have 44 for
15 identification shown to the witness, Your Honor.

16 THE COURT OFFICER: Witness has 44 for ID.

17 Q. Do you recognize that?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's the rights card I read to Mark Orlando.

21 Q. How do you know that?

22 A. My signature, Detective McGinn's signature, the
23 defendant's signature twice, the homicide squad numbers as
24 well as the date.

25 MR. HAYDEN: People offer that in evidence,

McHugh - People - Direct

1 Your Honor.

2 MR. LEMKE: No objection, Your Honor.

3 THE COURT: Mark it in evidence.

4 THE COURT OFFICER: People's 44 marked in
5 evidence.

6 Do you want it shown back to the witness?

7 MR. HAYDEN: Yes, please.

8 Q. Using 44 in evidence, please read the
9 constitutional rights to the jury the same way you read them
10 for the defendant, and please include any remarks he may have
11 made?

12 A. Before asking you any questions, you should
13 understand you have the right to remain silent and that any
14 statements you make may be used against you in court. Also
15 you have the right to talk to a lawyer before answering any
16 questions or to have a lawyer present at any time. If you
17 cannot afford to hire a lawyer one will be furnished you if
18 you wish and you have the right to keep silent until you have
19 had a chance to talk with a lawyer.

20 Do you understand? The defendant wrote the word yes next
21 to that.

22 Now that I have advised you of your rights, are you
23 willing to answer questions?

24 He then placed his signature after that.

25 I have been told by Detective McHugh that I have the

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1 right to remain silent and that any statements I make may be
2 used against me in court. I have been told I have the right
3 to talk to a lawyer before answering any questions or to have
4 a lawyer present at any time. Further I have been advised
5 that if I cannot afford to hire a lawyer, one will be
6 furnished me and I have the right to keep silent until I have
7 had the chance to talk with a lawyer.

8 I understand my rights and make the following statement
9 freely and voluntarily. I am willing to give this statement
10 without talking with a lawyer or having one present.

11 The defendant also signed his name after that.

12 Q. When you initially asked do you understand did he
13 respond verbally?

14 A. Yes. He said the word yes.

15 Q. When you asked, are you willing to answer
16 questions, did he respond verbally?

17 A. He also said yes.

18 Q. Did you or Detective McGinn speak with the
19 defendant after he was informed of his constitutional
20 rights?

21 A. Yes, we did.

22 Q. Describe your involvement in the conversation?

23 A. I asked him some basic pedigree information,
24 questions, his name, which was Mark Orlando. His date of
25 birth, which was September 26, 1970. His home address, which

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1 was 1119 Joselson Avenue in Bayshore. I asked him his home
2 telephone number, his work telephone number, which he
3 provided to me. I asked him if he had a cell phone, he said
4 yes. He also provided me with that telephone number. I
5 asked him what he did for a living. He told me he worked for
6 a collection agency called Professional Credit Services. He
7 worked on the telephones there trying to make collections of
8 delinquent payments for people. I asked him how long he had
9 been working there. He told me he's been working there since
10 1999. I asked him about his education. He told me he
11 graduated from Holly Trinity High School. He had attended
12 Nassau County Community for about a year and-a-half. I asked
13 him if he had any medical problems or conditions I should be
14 aware of. He told me no, he was healthy, but he had had some
15 stomach reduction surgery. I asked him about his family. He
16 told me he lived with his wife Diana and his mother-in-law
17 also lived in the house. His wife's maiden name was Dunn.
18 He told me his parents were both alive. I asked him where
19 they lived. He said they live in Commack. He told me that
20 they had a family business involving silk flowers, and I
21 believe his father also owned a mirror business at one time.
22 He told me he had two sisters and that one of the sisters was
23 married to a corrections officer.

24 Q. Describe any further conversation?

25 A. I asked him how he knew Bobby Calabrese. He told

McHugh - People - Direct

1 me that he had been introduced to Bobby Calabrese about six
2 weeks earlier by a friend of his named Tom Flores. Tom
3 Flores was also a friend of Bobby Calabrese. Tom Flores knew
4 that Mark Orlando was a gambler, and he knew that Bobby
5 Calabrese was a runner for a bookmaker. So, Tom had
6 introduced the two of them and they had started to gamble
7 together, Orlando and Calabrese. Bobby Calabrese had
8 provided Mark with an Offshore telephone number 888-866-2590
9 through which he could place his bets under an account named
10 of POP 1271 with a password of Tom, T-O-M.

11 As I said for the next six weeks Orlando gambled through
12 that 888 number. He claimed that he was up about \$10,000,
13 over the course of that six weeks. That recently he had
14 started to lose money gambling. So that on the Tuesday prior
15 to the murder, he had shot down the line. He was no longer
16 gambling. I asked him if that was a result of his wife
17 finding out he was gambling again. He said no, he had
18 started to lose, and he just decided it was time to shut it
19 down. I asked him what he bet on, told me he bet on college
20 and professional football and basketball.

21 I had a discussion with him about gambling on basketball
22 games. I told him I was a big sports fan. I thought
23 gambling on basketball, you know, was a ridiculous bet as far
24 as I was concerned. It was the only sport where in the final
25 minutes the other team will let people score uncontests as

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1 long as they have enough of a margin they know they're going
2 to win, baseball they bring in a pitcher, football they'll
3 still play defense. In basketball, if you're up a
4 substantial number of points, they'll still let you score,
5 because they know you don't have enough time to get enough
6 point to beat them.

7 My point was, if you allowed those points to be scored it
8 would have an affect on the point spread. If enough points
9 are allowed to be scored uncontested you can lose the bet.
10 So, I didn't think that was a good bet. He told me he didn't
11 know what I was talking about as far as gambling. That you
12 don't bet on the final score on a basketball game. You bet
13 on the over/under, the quarter, the half, that at times he
14 could have six or eight different bets going on within one
15 game.

16 I asked him about the payments during the six weeks he
17 was gambling with Bobby Calabrese. He told me that every
18 time he was due to collect, Bobby Calabrese would meet him
19 out in Farmingdale in the vicinity of Professional Credit
20 Services, in the parking lot and they would make their
21 payments.

22 He explained to me that on Friday night, December third,
23 he had gone to Island Park to make his payment to Bobby
24 Calabrese because he was supposed to make it on Thursday, but
25 he was unable to do so because he had worked until nine p.m.

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1 and his wife, he took his wife out after that. So, he had
2 called, Bobby told him he couldn't make the payment on
3 Thursday, he told him he'd hook up with him on Friday. He
4 had called him on Friday during the day and told him he would
5 meet him in Island Park because he was going to be out
6 picking up a check at Wantagh Suzuki.

7 I asked him, what he had done with his winnings during
8 the course of this six weeks, he told me he had paid some
9 bills. Paid some credit cards, put some money in the bank,
10 and he had also put some money into his wife's account in the
11 bank. I asked him about Friday night.

12 I asked him about Friday, December third, if he had
13 worked that day. He told me he had worked. That after work
14 he had gone to a gym, L.A. Fitness on Route 110, he had gone
15 there with a coworker, a good friend of his, by the name of
16 Herva Jeannot. When they went to the gym, there were also
17 some other friends of his and coworkers there, Barbara
18 Diàmant, Tom Flores, I believe another girl. He said worked
19 out, Herva had worked out. And at about 7:15 p.m. or 7:30
20 p.m., he drove down to Island Park with Herva to meet Bobby
21 Calabrese that evening.

22 He was driving his wife's 2004 Suzuki Verona. I asked
23 him why he wasn't driving his own car which was a 1991
24 Cougar. He told me that the car was old, beat up looking,
25 had tinted windows, it looked like a crack head's car. He

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1 also had problems with his driver's license so he wouldn't
2 drive that car at night because he was afraid of being
3 stopped by the police.

4 He and Herva left the gym on Route 110. They drove down
5 the Loop Parkway through Long Beach. When he got to the Long
6 Beach Bridge at about 8:25 p.m., he called Bobby Calabrese on
7 his cell phone and told him he would meet him over on
8 Industrial Place by Puma's, that he was just going over the
9 bridge. Bobby told him he'd be right up there. He told me
10 he and Herva parked on Industrial Place. I asked him if they
11 had gone directly to Industrial Place after they came across
12 the Long Beach Bridge. He said yes. I said, you didn't
13 drive around at all. He said no. I said are you familiar a
14 7-Eleven in that area. He said yes. I said, were you over
15 by that 7-Eleven at all. He said no. Said they drove over
16 the Long Beach Bridge directly to Industrial Place where they
17 waited to meet Bobby.

18 I asked him how he knew Industrial Place and the Island
19 Park area since he lived in Suffolk and Herva lived in
20 Suffolk. He told me that his father had owned an auto body
21 repair shop on Industrial Place about twenty years prior.
22 His wife had lived in the Island Park/Long Beach area, and
23 that he had a very good friend who lived on Knickerbocker
24 Avenue in Island Park. I asked him if Herva new that area.
25 He said no. Herva did not know that area as far as he knew.

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1 After they parked on Industrial Place, a couple of
2 minutes later, Bobby Calabrese pulled up, in an automobile.
3 He was by himself. He didn't know whether the car was an
4 Infiniti or Lexus, but he believed it was Bobby's car because
5 he had seen him drive it on prior occasions when he made the
6 payments out in Farmingdale. Bobby pulled up, they were
7 driver's door to driver's door. They spoke for about a
8 minute. He handed Bobby \$17,000 in two, what he described as
9 bricks. One brick being \$10,000, the second brick being
10 \$7,000. I asked him, ever got out of the automobile. He
11 said no.

12 I asked him if Herva ever got out of the automobile. He
13 said no. I asked him if he had introduced Herva to Bobby at
14 that time. He said no. He just handed him the money. They
15 spoke for less than a minute and Bobby then drove away, made
16 a left onto Austin Boulevard, heading towards Oceanside.
17 They made a right heading towards Long Beach, and he went
18 back through Long Beach and up the Loop Parkway.

19 I said to him, that was a lot of money you were
20 carrying. Is there any possibility you had a weapon with
21 you. He said no, I didn't have anything with me. I said no
22 guns. He said no, no gun. I said did Herva have a weapon or
23 gun of any type. No. I asked him if he had ever seen Herva
24 with a gun. And he said no.

25 They drove through Long Beach up the Loop Parkway. He

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1 called the Wantagh Suzuki car dealership in an attempt to get
2 some type of a check that he was owed. He started to explain
3 to me, how that all came about, about a trade-in of cars and
4 a negative credit problem he got as a result. That is why he
5 was owed that money. He had called the dealership just as he
6 was leaving Island Park. He went up to the Suzuki
7 dealership, however, it was closed. When he had called the
8 dealership, they told him that the owner Ralph was not in,
9 that he would not be able to get his check that evening. He
10 then drove up to the dealership, but it was closed.

11 He stopped at a CitiBank branch located on Sunrise
12 Highway in Wantagh. He had to get money because he just paid
13 everything to Bobby Calabrese. He needed some cash. He
14 withdrew \$300.

15 He then drove up to route 135 to Plainview 14 Main which
16 was the home of a coworker Vivian Borushik. Mark Orlando
17 explained to me that Vivian had some work done on her yard, a
18 fence, a pool, and a deck, Mark had assisted her in having
19 that done and he wanted to, she wanted him to come and look
20 at some additional work and to see the pool and things of
21 that sort. So, they had driven up there and looked at her
22 yard. He then went home. He got home about 10:30 p.m.

23 I asked him how he found out that Bobby Calabrese had
24 been killed. He told me that Tom Flores had called him on
25 Saturday morning and told him that Bobby had been killed. He

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1 said at that time he told Tom Flores to give his cell phone
2 number to Bobby's family or anyone else that wanted to know.
3 I said why would you do that. He said I wanted to tell
4 anybody that wanted to know that I had paid Bobby and when I
5 left him he was alive.

6 I asked him if he remembered a telephone conversation
7 with Barbara Diamant on that same Saturday. He said yes. I
8 said, when you spoke to Barbara, at the time you spoke to
9 Barbara did you know how Bobby had been killed and he said
10 know, he did not know at that time.

11 Q. Did he talk to you about his debts?

12 A. Yes, he did. He explained to me that he had about
13 ten outstanding debts total. He told me he had a mortgage on
14 his home of \$307,500. He had a car loan for \$299 a month.
15 He had about \$20,000 in credit card bills on two credit
16 cards. And he had a \$25,000 loan to have a built in pool
17 installed in his home. I asked him how much his home was
18 valued at. He told me it was valued at about \$350,000. I
19 said to him, you have a lot of debts versus your equity in
20 that home based on what you're telling me. I said maybe your
21 house is worth, you know, more than you think, and he said to
22 me, detective, you haven't seen the neighborhood my house is
23 in my. House is worth what I told you, about \$350,000.

24 Q. Did he speak about his debts in greater detail with
25 Detective McGinn?

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1 A. Yes, he did. I had asked Detective McGinn to speak
2 to him in reference to his debts. And also in reference to
3 the car situation at Wantagh Suzuki which resulted in this
4 refund check being issued.

5 Q. Did you speak with him about getting lost in the
6 vicinity of the murder?

7 A. I asked him if he was familiar with that area. He
8 told me he was quite familiar with that area. As I said, his
9 father owned this body shop of some sought down on Industrial
10 Place about twenty years earlier. His wife's family lived
11 down in the Island Park/Long Beach area. His wife lived down
12 in that area for a period of time. He traveled through there
13 on many occasions as we discussed, locations and streets and
14 businesses. He was very familiar with all of that.

15 Q. And would not get lost?

16 A. Absolutely not.

17 Q. That is what he said?

18 A. Absolutely not. That is what he said.

19 Q. Did he tell you how he got to Island Park that
20 night?

21 A. Told me he drove in his wife's 2002 Suzuki Verona
22 and the route they took was Route 110 to the Southern State
23 Parkway to the Wantagh Parkway to the Loop Parkway, which
24 then brings you out into Long Beach, over the Long Beach
25 Bridge directly to Industrial Place.

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1 Q. Did he talk to you about what he did with his
2 winnings through Bobby?

3 A. Told me he had paid some credit card bills, paid
4 some other bills, and put some money in his bank account and
5 put some money in his wife's bank account.

6 Q. Did he tell you there was anything unusual when he
7 went to the Borushik's?

8 A. Not at all. She was a friend of his, a coworker,
9 he went there, he had been, she had been asking him to go
10 there for a period of time. He decided since he was out that
11 evening, even though it was dark, he would stop by.

12 Q. Nothing unusual happened while he was there?

13 A. No. He looked at the yard, the pool, the fence,
14 and that was it. Herva waited in the automobile he said.

15 Q. You testified that he said he always met Bobby out
16 at the place where the defendant worked; is that right?

17 A. Yes.

18 Q. Did he tell you that was win or lose?

19 A. Either way, win or lose.

20 Q. That is what he said?

21 A. That is what he said. He said Bobby was a runner,
22 and that is the agreement that they had.

23 Q. Did he tell you he had no idea what happened to
24 Bobby?

25 A. After I spoke to him about the telephone calls on

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1 that Saturday involving Tom Flores and Barbara Diamant, and
2 he told me that because of those phone calls his wife had
3 found out he was gambling again, and she had become quite
4 upset with him, threatened to leave him, he ended that part
5 of the conversation by saying to him, that's all you know
6 about the death of Bobby Calabrese, you met him, you paid
7 him, he drove away towards north Long Beach, you drove south
8 through Long Beach, he drove towards Oceanside, you went
9 through Long Beach, through the parkway, and did what you
10 described to me, and he said yes.

11 MR. HAYDEN: With the Court's permission, may
12 the detective step down in front of the jury?

13 THE COURT: Yes.

14 Q. Using 33 and 34 in evidence, please show the jury
15 the relative locations of Puma's, McCabe's and the scene of
16 the murder?

17 A. The scene, the general area where the murder
18 happened, McCabe's is southwest of the scene. This being
19 Austin Boulevard. This is the other side of Austin
20 Boulevard. This being Puma's, also located on Austin
21 Boulevard. Further south the road that runs down both of
22 these is Industrial Place.

23 Q. You would drive down in the direction of the scene
24 of the murder to get to Oceanside?

25 A. Yes.

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1 Q. Just show the jurors at the far end there.

2 A. The scene, McCabe's, a vacant restaurant, which is
3 southwest, there's Austin Boulevard. So, it's on the other
4 side of Austin Boulevard from the scene, Puma's further south
5 also located on Austin Boulevard. The road that runs through
6 both of those establishments is Industrial Place.

7 Q. Please retake the witness stand.

8 Did the defendant write anything while you and Detective
9 McGinn were speaking with him then?

10 A. Yes, he did.

11 Q. How did that happen?

12 A. While we were speaking to him, he asked for a piece
13 of paper and a pen. We provided him with a pad and a
14 pencil. As we were speaking, he took notes concerning our
15 discussion about gambling. In those notes he explained to us
16 certain days of the week, where the weeks gambling ended,
17 when the payments were due, amounts.

18 He also wrote a description of his events that evening,
19 where he went, who he saw. The Wantagh Suzuki information
20 also. He also drew a map showing Puma's. He also drew
21 something relative to Vivian Borushik's fence and pool.

22 MR. HAYDEN: May I have these four sheets of
23 paper marked 66A, B, C and D for identification.

24 THE COURT OFFICER: They were previously
25 marked 49A, B, C and D for identification.

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1 The witness has 49A, B, C and D for ID.

2 Q. Do you recognize those sheets?

3 A. Yes, I do.

4 Q. What are they?

5 A. They're the notes that Mark Orlando took during my
6 interview of him.

7 Q. How do you know that?

8 A. Based on the information that I described that
9 included in these notes and Mr. Orlando's signature, initials
10 on the pages.

11 MR. HAYDEN: People offer those, Your Honor,
12 as 49A, B, C and D in evidence.

13 MR. LEMKE: We have seen them. We have no
14 objection.

15 THE COURT: Mark them into evidence.

16 THE COURT OFFICER: People's 49A, B, C and D
17 have been marked in evidence.

18 Do you want them shown back to the witness,
19 counsel?

20 MR. HAYDEN: No, thank you.

21 Q. Did you begin reducing what the defendant was
22 saying to writing?

23 A. Yes, I did.

24 Q. When did you begin reducing what the defendant was
25 saying to writing?

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1 A. 12:10 a.m.

2 Q. Describe for the jury how you reduced what the
3 defendant was telling you to writing?

4 A. Based on the details that the defendant had given
5 me, I would construct a sentence based on those facts, say
6 the sentence back to him, if he agreed with the contents, I
7 would then continue in narrative form.

8 Q. When did you finish reducing what the defendant was
9 telling you in writing?

10 A. Just before two a.m.

11 Q. What did you do with the defendant's written
12 statement?

13 A. I read it back to him.

14 Q. What happened then?

15 A. I asked, I had said to him, if you have anything
16 that you want change or correct or that's incorrect, let me
17 know. As I read it back to him, he did ask me to make a
18 couple of corrections, which I did, and he also asked me to
19 make an addition which I did.

20 Q. Describe that addition?

21 A. He asked that a line be admitted indicating that
22 Detective McGinn was also present during that statement.

23 Q. Describe the correction?

24 A. He had me change where it said, Bobby Calabrese was
25 a book maker. He had me change it to a runner. And he also

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1 had me change a line where I said he paid off his credit
2 cards to made a payment -- Id' have to see the statement to
3 make the exact change, but it had to do with that.

4 Q. Did the defendant sign each page of that
5 statement?

6 A. Yes, he did.

7 Q. When did he sign it?

8 A. After he read it and initialed the changes.

9 MR. HAYDEN: May I please have this statement
10 premarked 45 for identification shown to the witness.

11 THE COURT: Yes.

12 THE COURT OFFICER: The witness has 45 for ID.

13 Q. Do you recognize that?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's a written statement I took from Mark Orlando
17 on December 10, 2004.

18 Q. Do you recognize the contents?

19 A. Yes, I do.

20 Q. Whose signatures are those?

21 A. My signature, Detective McGinn's signature as well
22 as the defendant's signature.

23 MR. HAYDEN: Offer that, Your Honor, as 45 in
24 evidence.

25 MR. LEMKE: No objection.

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1 THE COURT: Mark it in evidence.

2 THE COURT OFFICER: People's 45 is marked in
3 evidence.

4 MR. HAYDEN: With the Court's permission, may
5 I read this statement for the jurors?

6 MR. LEMKE: No objection.

7 THE COURT: Yes.

8 MR. HAYDEN: Homicide 521, 2004, December 10,
9 2004. Statement of Mark Orlando. My name is Mark
10 Orlando, I am thirty-four years old and I was born on
11 September 26, 1970. I live at 1119 Joselson Avenue,
12 Bayshore, New York, with my wife Diana.

13 I have been told by Detective McHugh I have the
14 right to remain silent and that any statement I make may
15 be used against me in court. I have been told that I
16 have the right to talk with a lawyer before answering
17 any questions or to have a lawyer present at any time.

18 Further, I have been advised if I cannot afford to
19 hire a lawyer, one will be furnished me and I have the
20 right to keep silent until I have had the chance to talk
21 with a lawyer.

22 I understand my rights and make the following
23 statement freely and voluntarily. I am willing to give
24 this statement without talking with a lawyer or having
25 one present.

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1 About six weeks ago I met a guy named Bobby
2 Calabrese from Long Beach. I was introduced by my
3 friend Tom Flores who I work with at Professional Credit
4 Services in Farmingdale. Tom told me that Bobby was a
5 runner for a bookmaker and I am a gambler. A day or two
6 later Bobby called me. I don't know whether he called
7 me on my cell (631) 882-3428 or at my work number of
8 (631) 393-9563 he gave me a number to call my bets into,
9 (888) 866-2590, an account name of POP, P-O-P, 1271, and
10 a password of Tom. I bet pro and college football and
11 pro basketball on my account. The first week I won
12 eight hundred and change. The second week I won
13 \$1,065. Week three I won \$8,700. On week three Bobby
14 only paid me \$7,600 or \$7,800. He rolled the rest over
15 to the next week. I would usually square up with him at
16 the end of the week. In week four, I won \$17,900 and
17 Bobby paid me all \$17,900, and he still owed me from
18 week three. I gave him a \$300 tip. Week four was
19 Thanksgiving. On week five I lost \$8,700. And the
20 following week I lost \$9,100.

21 All of my meetings with Bobby up to this point were
22 in Farmingdale. I owed Bobby \$8,700 which was due on
23 Thursday, December 2, 2004, on Monday and Tuesday,
24 November twenty-ninth and thirtieth, I lost \$9,100,
25 which would be due on Thursday, December 9, 2004. When

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1 I lost a lot of money on Tuesday night, November 30,
2 2004, I decided to shut down my gambling line. I called
3 Bobby on his cell which was (516) 790-4461 and told him
4 to shut down my line. He left a voice mail. I spoke to
5 Bobby on Wednesday and Thursday, November first and
6 second, 2004. Even though I owed Bobby \$7,000, I am
7 still up \$10,000 for the six weeks.

8 MR. LEMKE: Your Honor, that is December first
9 not -- that is my objection.

10 THE COURT: Mr. Hayden.

11 MR. HAYDEN: I read, I spoke to Bobby on
12 Wednesday and Thursday, December first and second,
13 2004.

14 THE COURT: Thank you.

15 MR. LEMKE: Thank you.

16 MR. HAYDEN: I couldn't meet Bobby on Thursday
17 night, because I worked until nine p.m. Then I went out
18 with my wife. On Friday, December third, 2004, I went
19 to work at eight a.m. during the afternoon Bobby called
20 me at work and we agreed to meet that night. I told
21 Bobby, I would be out and about and I'd go to Wantagh
22 Suzuki. Bobby said he was going to have dinner at 6:30
23 p.m., and I told him I would say call him when I got
24 near Island Park that night.

25 After work, Friday, I went to L.A. Fitness on Route

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1 110 in Farmingdale. I went there with some friends and
2 coworkers, Tom Flores, Barbara Diamant, Herva Jeannot
3 and Rory Hoffman was with me. Herva is a good friend of
4 mine. He works with me and he lives in Deer Park.
5 About 7:15 or 7:30 p.m. I left the gym with Herva. We
6 drove to Island Park in my wife's silver Suzuki Verona.
7 I drove through Long Beach from the Loop Parkway and
8 when I was crossing the Long Beach Bridge I called Bobby
9 from my cell. It was 8:25 p.m.

10 I told Bobby to meet me on Industrial Place in
11 Island Park by a building that used to be a restaurant.
12 I parked facing out toward Austin Boulevard. About
13 five minutes later, Bobby pulled up in his Infiniti or
14 Lexus. He was alone. He pulled up next to me side by
15 side. We never got out of the car. I had the \$17,000 I
16 owed Bobby. I had a brick of \$10,000, and a brick of
17 \$7,000. I talked to Bobby for about a minute and I
18 handed him the money through the window of his car. We
19 both drove out to Austin Boulevard. Bobby made a left
20 towards Oceanside, and I made a right to go through Long
21 Beach on the Loop Parkway.

22 I left Island Park at 8:30 p.m. When I went into
23 Island Park that night, after I went over the bridge, I
24 drove directly to Industrial Place where I waited for
25 Bobby. I know Industrial Place because my father used

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1 to own a body shop there, and my wife used to live in
2 Island Park. I didn't drive around. I knew exactly
3 where I was going. I called Wantagh Suzuki to see about
4 picking up a check they had for me. I drove up the
5 Wantagh Parkway and went to Wantagh Suzuki, but it was
6 closed. The door was locked and it was nine p.m. Then
7 I went to CitiBank on Sunrise Highway in Wantagh and
8 used the ATM. I then drove to my friend's house, Vivian
9 Borushik in Plainview to look at her pool, fence and
10 some other construction work. I then drove Herva home
11 to Deer Park. It was about 10:30 p.m. I then drove
12 home.

13 The \$17,000 that I paid Bobby that night is the same.
14 \$17,000 that Bobby had paid me when I won gambling. I
15 still have \$1,000 of my winnings from Bobby in my safe.
16 Some of the money I won with gambling I used to pay
17 towards my credit cards and I put a couple of thousand
18 dollars in my wife's account.

19 On Saturday morning, I got a call at home from Tom
20 Flores. He told me that Bobby was dead. He didn't say
21 how it happened. I told Tom I had met Bobby the night
22 before, and he should give me, he should give my cell
23 number to Bobby's family so I could tell, whoever it
24 was, what had happened at my meeting with Bobby.

25 That morning, which was my wife's birthday, she

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1 found out that I was gambling with a bookmaker. My wife
2 was very angry at me for gambling, and she told me that
3 she would leave me if she weren't pregnant with my
4 child. In the morning, Barbara Diamant also called me.

5 All I knew at that point was that Bobby was dead. I
6 didn't know how he was killed.

7 I am present at the Nassau County Police Department
8 homicide squad where I am giving this statement to
9 Detective McHugh who is writing it for me. I have read
10 it and it is the truth.

11 Detective McGinn is also present and I wanted his
12 name added.

13 Q. Was the defendant offered anything to eat or drink
14 that night?

15 A. Yes, he was.

16 Q. When was that?

17 A. A little after two a.m. he was offered an egg
18 sandwich which he refused. He had some water. He explained
19 to us he had difficulty digesting some foods due to his
20 stomach surgery.

21 Q. Did the defendant use the men's room whenever he
22 asked?

23 A. Yes, he did.

24 Q. Describe the defendant's physical condition while
25 you were with him that night?

McHugh - People - Direct

1 A. He appeared fine, healthy, had no complaints.

2 Q. Describe the defendant's demeanor while you were
3 with him that night?

4 A. He was calm, responsive to my questions, overly
5 enthusiastic in describing his gambling and eager to describe
6 the night's events.

7 Q. Did the defendant's demeanor ever change while you
8 were around him that night?

9 A. No, it did not.

10 Q. Did the defendant remain composed throughout the
11 conversation?

12 A. Yes.

13 Q. Was an ATM receipt recovered during the course of
14 the investigation?

15 A. Yes.

16 Q. Who recovered it?

17 A. Detective Cereghino from the homicide squad.

18 Q. When it was recovered?

19 A. December 10, 2004.

20 Q. Where was it recovered?

21 A. In Mark Orlando's desk at his place of employment,
22 Professional Credit Services in Farmingdale.

23 Q. Describe this ATM receipt?

24 A. It's an ATM receipt from the CitiBank branch in
25 Wantagh dated December 3, 2009, at 9:12 p.m., showing a

McHugh - People - Direct

1 withdrawal of \$300 cash.

2 Q. Was that the only ATM receipt recovered from the
3 place where the defendant worked?

4 A. Yes.

5 Q. Was the defendant's house searched?

6 A. Yes.

7 Q. Any ATM receipt recovered there?

8 A. No.

9 Q. Any receipt recovered from the defendant's clothing
10 when he was arrested?

11 A. No.

12 Q. Did the defendant provide directions where to find
13 the murder weapon?

14 A. Yes, he did.

15 Q. What did he tell you?

16 A. It was thrown into the water off the bridge under
17 construction on the Wantagh Parkway.

18 Q. Was the murder weapon recovered there?

19 A. Yes, it was.

20 MR. HAYDEN: No further questions, Your
21 Honor.

22 MR. LEMKE: May I, Your Honor?

23 THE COURT: Yes.

24 MR. LEMKE: Thank you.

25 DIRECT EXAMINATION

McHugh - People - Cross

1 BY MR.LEMKE:

2 Q. Detective, good morning.

3 A. Good morning.

4 Q. Would you be considered the carrying detective on
5 this case?

6 A. Yes.

7 Q. For the jury, a carrying detective is a detective
8 that is assigned a particular investigation, in this case,
9 being part of a homicide, you'd be the one that would ask the
10 other detectives or the police officers to perform certain
11 tasks; is that correct?

12 A. That would be part of it, yes.

13 Q. And part of it would be for them to report back to
14 you any information they may have gathered?

15 A. Yes.

16 Q. Report back to you; is that correct?

17 A. Yes.

18 Q. On December third of '04, this case became your
19 case for investigating purposes, correct?

20 A. Yes.

21 Q. You had responded to a location in North Long
22 Beach/Island Park I think you indicated about 9:30?

23 A. 9:30 I got there.

24 Q. That would be at night, correct?

25 A. Yes.

McHugh -- People -- Cross

1 Q. I think you indicated that in the course of your
2 investigation, in particular I think December fourth, you had
3 the opportunity to review a video from the storage facility;
4 is that correct?

5 A. Yes.

6 Q. When I say video, it was actually produced by the
7 electronics unit under your direction, but it was stills or
8 images taken from a computer base; is that correct?

9 A. Yes.

10 Q. In reviewing that, you also did a canvass of the
11 area for any witness that may have been eyewitnesses to this
12 event; is that correct?

13 A. Yes.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 A. Yes.

18 Q. Now, when you arrived at about 9:30, I think you
19 indicated that the storage lot was closed at that point?

20 A. The facility itself was closed.

21 Q. When you say closed, you saw the videotape,
22 correct?

23 Withdrawn.

24 Still images were taken from the storage center. The
25 gate was open; isn't that correct?

McHugh - People - Cross

1 A. Yes.

2 Q. On the camera facing eastbound?

3 A. That's correct.

4 Q. When the storage facility closes, that gate is
5 closed, isn't it?

6 A. I don't know that.

7 Q. Well, you arrived at 9:30, correct?

8 A. Yes.

9 Q. 9:30 the storage facility was closed?

10 A. There was no response from anyone on the premises.
11 Yes, it was closed.

12 Q. But at 8:30 you don't know if it was closed,
13 correct?

14 A. 8:30 the police weren't involved. I wouldn't know.

15 Q. 8:30 it could very well have been open?

16 A. Could have been, yes.

17 Q. And, in fact, when you had arrived you had already
18 arrived after the sweat shirt Mr. Calabrese was wearing was
19 cut open, correct?

20 A. Sweat shirt had been cut prior to my arrival, yes.

21 Q. The emergency personnel had been there already?

22 A. Yes.

23 Q. I think police officers were there as well,
24 correct?

25 A. Yes.

McHugh - People - Cross

1 Q. Okay. And, during the course of this
2 investigation, over the next week, you had received either
3 cell phone numbers, you were able to check perhaps what
4 Mr. Calabrese had been up to days or weeks before, so that
5 you could determine, anyone that you'd like to talk to that
6 could be associated with the death of Mr. Calabrese; would
7 that be correct?

8 A. That would be part of the investigation, yes.

9 Q. And then on December ninth, there was a
10 determination Mr. Orlando be placed under arrest and be
11 brought in for questioning; am I correct?

12 A. Yes.

13 Q. And, in fact, he was placed under arrest, you were
14 present when he was arrested, correct?

15 A. Yes.

16 Q. Didn't resist the arrest, correct?

17 A. No, he did not.

18 Q. In fact, he was permitted to leave in his car from
19 his work place, drive perhaps about a mile halfway, then when
20 the lights went on to, or the unmarked vehicle placed its
21 lights on, he pulled over?

22 A. He pulled over when another police vehicle pulled
23 up in front of him. I didn't pull over and respond to the,
24 to the car behind. That is my belief. I believe he pulled
25 over in response to the car in front of him.

McHugh - People - Cross

1 Q. You were following the car Mr. Orlando was driving,
2 correct?

3 A. Yes.

4 Q. You didn't observe any police vehicles put on any
5 lights at all, correct?

6 A. I saw the lights on, yes.

7 Q. That was before Mr. Orlando pulled over, correct?

8 MR. HAYDEN: Objection to the pulled over.

9 That is coming out of nowhere.

10 THE COURT: Overruled.

11 Q. You were following Mr. Orlando, correct?

12 THE COURT: Overruled. Can you answer the
13 question or do you want him to rephrase?

14 THE WITNESS: I can answer the question.

15 Q. Thank you.

16 A. There were three police vehicles there. One pulled
17 in front of him, one was directly behind him, and then I was
18 behind that one. When the vehicle pulled in front of him
19 with its lights on he stopped.

20 Q. So, it wasn't if Mr. Orlando was avoiding any
21 police pursuit at all, he was driving, then the officers, one
22 pulled in front of him, the other one behind him, that is, of
23 course, when he stopped?

24 A. Prevented any chance of something you're describing
25 occurring, yes.

McHugh - People - Cross

1 Q. Thank you. He also at that point was then asked
2 to get out of the car, correct?

3 A. Yes.

4 Q. Didn't struggle with any of the other officers as
5 far as you could observe?

6 A. That's correct.

7 Q. Then was escorted back by yourself and by one other
8 officer, Detective McGinn, I believe?

9 A. Escorted back to headquarters.

10 Q. I believe you said headquarters?

11 A. Yes.

12 Q. When he gets back, there is no conversation, I
13 believe, in the vehicle, correct?

14 A. I had a conversation with him.

15 Q. Basically telling him, regarding the death of Mr.
16 Calabrese, you wanted to talk to him, correct?

17 A. And our introduction. Yes, that is it.

18 Q. There was nothing said by Mr. Orlando, there wasn't
19 any further conversation, correct?

20 A. I instructed, I instructed him I would speak to him
21 when we got back to Mineola.

22 Q. Then when you get back to Mineola, you begin to
23 have a conversation with Mr. Orlando, correct?

24 A. Yes.

25 Q. You and officer, I should say, Detective McGinn,

McHugh - People - Cross

1 correct?

2 A. Yes.

3 Q. And that first conversation lasted about two hours
4 as far as the time frame, from about ten o'clock that night,
5 the night I believe, that is the Thursday night; isn't that
6 correct?

7 A. Yes.

8 Q. Until about midnight, would that be correct to say?

9 A. It actually started at 10:10 and it goes till
10 12:10. Yes, two hours.

11 Q. That would be two hours and twenty minutes about,
12 correct?

13 A. Two hours about, 12:10, I mean, 10:10 p.m. to 12:10
14 a.m.

15 Q. I am sorry. About two hours?

16 A. Right.

17 Q. And that conversation gets codified in writing
18 which Mr. Hayden just read to this jury, correct?

19 A. Could you clarify what you mean by codified.

20 Q. You reduce it to writing?

21 A. Yes.

22 Q. You wrote down everything you felt was significant,
23 but you didn't write down everything?

24 A. That would be impossible.

25 Q. And, in fact, you write down the statement, Mr.

McHugh - People - Cross

1 Orlando signs that statement, correct?

2 A. Yes.

3 Q. I think he signed it on each page, I believe?

4 A. Yes.

5 Q. And you testified as part of the conversations that
6 you had regarding his family, regarding gambling, a number of
7 things, correct?

8 A. Yes.

9 Q. And during your course of speaking to my client,
10 not once did he ever mention that he was involved with the
11 shooting of Mr. Calabrese, correct?

12 A. No.

13 Q. Didn't mention that Herva Jeannot had shot
14 Mr. Calabrese, correct?

15 A. No.

16 Q. In fact, nothing at all about how he even knew that
17 Mr. Calabrese was killed, correct?

18 A. No.

19 Q. Now, at about two o'clock, I am sorry, about twelve
20 o'clock that night, he is then left in that room, correct?
21 The interview room, if I may call it that?

22 A. You're saying what time?

23 Q. About twelve o'clock, ten after twelve now into the
24 morning of Friday morning, which would be December tenth?

25 A. No, he was left, I leave him after two a.m.

McHugh - People - Cross

1 Q. Well, between twelve and two a.m., what occurs?

2 A. We had a conversation that I have described and
3 then I took a written statement from him.

4 Q. That takes another two hours?

5 A. Yes.

6 Q. You speak to him from ten to ten Thursday night
7 through about, I should say, twelve o'clock midnight;
8 correct?

9 A. I start speaking to him at 10:10 p.m., and I start
10 taking a written statement from him and continuing the
11 discussion to facilitate that statement at about ten minutes
12 after twelve.

13 Q. Then at about ten minutes after twelve you reduce
14 it to writing which Mr. Hayden just read to this jury?

15 That is completed about two clock?

16 A. Yes.

17 Q. Now, during that time, where he was brought in,
18 didn't he request a call be made to his wife and family to
19 let them know where he was?

20 A. He declined to make a call to his wife.

21 Q. He declined. You asked him and he said no?

22 A. Yes.

23 Q. You reduced that in writing somewhere; is that
24 correct?

25 A. It's in Detective McGinn's notes I believe.

McHugh - People - Cross

1 Q. McGinn was present during that?

2 A. Yes.

3 Q. So, during these four hours then you're with
4 Mr. Orlando, Mr. Detective McGinn is also with you, correct?

5 A. Yes.

6 Q. Just about the whole time, correct?

7 A. Yes.

8 Q. At two o'clock now that Friday morning, you leave
9 Mr. Orlando; isn't that correct?

10 A. (No verbal response.)

11 Q. You step out, I think Detective McGinn also steps
12 out, correct?

13 A. Yes.

14 Q. And, based on the part of this first statement,
15 there had been a consent search later, signed the form,
16 signed by Mr. Orlando, to search his home; isn't that
17 correct?

18 A. There was a consent for his place of employment.

19 Q. And, also his home, wasn't there?

20 A. I know we got a search warrant. Whether he had
21 done a consent, I don't recall.

22 Q. And, in fact, as a carrying detective you're aware
23 that there were certain things recovered from his house;
24 isn't that correct?

25 A. Yes.

McHugh - People - Cross

1 Q. Okay. Do you recall what some of those items
2 were?

3 A. Some clothing, sneakers, shotgun, some ammunition
4 for that shotgun, some currency.

5 Q. Currency which was found in the safe?

6 A. Yes.

7 Q. Just about under \$2,800 in cash, correct?

8 A. \$2,749, yes.

9 Q. And, I think there was a receipt of something,
10 Wantagh Suzuki as well?

11 A. Yes.

12 Q. That was the safe where Mr. Orlando indicated he
13 had taken the cash from to pay Mr. Calabrese; isn't that
14 correct?

15 A. Yes, he told me that.

16 Q. Now, from two o'clock when you step out of the
17 interview room, Herva Jeannot is present in the homicide
18 squad, correct?

19 A. Yes, he is.

20 Q. Same floor as Mr. Orlando, correct?

21 A. Yes.

22 Q. You testified about forty feet from another room,
23 across the way, correct?

24 A. Yes.

25 Q. You can see from one door to the other, they're

McHugh - People - Cross

1 both open, whose in each room, correct?

2 A. You could if you were standing in the perfect
3 spot.

4 Q. The answer is yes?

5 MR. HAYDEN: Objection.

6 THE COURT: Sustained.

7 Q. Standing in the wrong spot you can't see; is that
8 right?

9 A. The way the rooms are designed, if the defendant is
10 seated where he should be in the interview, you can't see
11 each other.

12 Q. This eight hours or seven hours he is permitted to
13 go to the bathroom, he is taken out of that room, isn't the
14 other room right in his view as you come out that door and
15 the other interview room is right across the office, correct?

16 A. We take measures to prevent that from occurring.
17 We keep the doors closed. We know when people are being
18 moved for a variety of reasons to prevent that, also for
19 security reasons.

20 Q. Would it be correct to say that from the time that
21 Mr. Orlando was there, ten o'clock that night to two in the
22 morning, that you took precautions so my client did not see
23 Herva Jeannot?

24 A. Yes.

25 Q. Okay. Now, it's now two o'clock in the morning,

McHugh - People - Cross

1 Friday, you and Detective McGinn step out, my client's left
2 there basically alone for about the next three hours; would
3 that be correct?

4 A. Yes.

5 Q. So, about five in the morning; is that correct?

6 A. Somewhere around five, yes.

7 Q. And at five in the morning, Detective McGinn goes
8 back in to talk to Mr. Orlando; is that correct?

9 A. Yes.

10 Q. And he goes in at five o'clock and he is there for
11 about a half hour?

12 A. I don't know that.

13 Q. In fact, you weren't present so you don't know
14 exactly what that conversation was?

15 You weren't present for that conversation. Let me leave
16 it at that. Correct?

17 A. I was not, that's correct.

18 Q. And that conversation you don't know then, that
19 would be for Detective McGinn, how Detective McGinn was in
20 with my client after five o'clock in the morning. Would that
21 be correct?

22 A. That would be correct.

23 Q. And, at some point in time, you're made aware by
24 Detective McGinn of what Mr. Orlando had to say; isn't that
25 correct?

McHugh - People - Cross

1 A. Yes.

2 Q. And, Detective McGinn then goes back in again at
3 about maybe seven in the morning.

4 Would that be correct?

5 A. I don't know that.

6 Q. Okay. That would be for Detective McGinn?

7 A. Yes.

8 Q. And then there is another conversation with
9 Mr. Orlando by Detective McGinn, and that is relayed to you
10 also, correct?

11 A. Yes.

12 Q. And then, based on that, you ask Detective
13 Cereghino to then go in at about nine in the morning, I
14 believe, to speak to my client; isn't that correct?

15 A. Yes.

16 Q. And Detective Cereghino speaks to my client and
17 then takes which would actually be a third statement, a
18 second written statement, from my client, correct?

19 A. A second written statement, yes.

20 Q. And you weren't present for those oral statements,
21 that statement made by my client when it's reduced by
22 Detective Cereghino?

23 You weren't present?

24 A. No.

25 Q. You're aware of the contents of what is in that

McHugh - People - Cross

1 statement, correct?

2 A. Yes.

3 Q. That statement, that last one, ended at about
4 eleven o'clock in the morning, correct?

5 A. I don't know that.

6 Q. That would be Detective Cereghino?

7 A. Yes.

8 Q. As you sit here now, you're aware of the three
9 different statements, correct?

10 A. I don't know what you're classifying or making a
11 third statement from. I know of two written and I know of
12 the interviews.

13 Q. Okay. Now, during the time that the other two
14 detectives are speaking to my client, that would be at your
15 direction?

16 A. Myself and my supervisor.

17 Q. And for the time that you had spoken to my client,
18 I think you indicated that he was cooperative, correct?

19 A. I didn't describe him as cooperative.

20 Q. Did he answer your questions?

21 A. He was responsive to my questions.

22 Q. So, when you say he is not cooperative, you asked
23 him a question, he gave you an answer, it may not be the
24 truth, maybe that is why you're saying he is not cooperative,
25 but he answered it?

McHugh - People - Cross

1 A. He was responsive to my questions, but he was not
2 cooperative because he didn't tell me the truth, yes.

3 Q. That would be a determination perhaps made by the
4 jury or Detective Cereghino as to what the truth would be.
5 Would that be correct?

6 MR. HAYDEN: Objection.

7 THE COURT: Sustained.

8 MR. LEMKE: Withdrawn.

9 Q. As far as cooperation?

10 MR. HAYDEN: Objection.

11 THE COURT: Sustained.

12 MR. LEMKE: Withdrawn.

13 Q. If a question is asked, and there is an answer
14 given, let's define what cooperation means. He cooperated
15 with you?

16 MR. HAYDEN: Objection.

17 A. No, he did not.

18 THE COURT: Sustained.

19 Q. You asked him a question, he answered it?

20 THE COURT: Mr. Lemke, I think that he has
21 answer that question. Let's move on.

22 MR. LEMKE: It's been kind of --

23 THE COURT: I know. I think you went through
24 it. So --

25 Q. The four hours you were with him, do you tell him,

McHugh - People - Cross

1 you're a liar, I don't like that answer, I don't believe
2 that. Is that what happened?

3 A. No, I did not.

4 Q. So, you're asking him to tell you about gambling
5 and he is answering, you're writing it down, correct?

6 A. That was part of it, yes.

7 Q. You asked him how he knows Bobby, you're writing
8 that down?

9 A. Yes.

10 Q. You asked him about the gambling, how he was up and
11 how he won, and you recorded that as well?

12 A. Yes.

13 Q. And, I think your answer was that he was overly
14 enthusiastic I think was your word?

15 A. Yes.

16 Q. Correct?

17 A. I describe him as overly enthusiastic relative to
18 describing his gambling, yes.

19 Q. I have nothing further.

20 Thank you detective.

21 THE COURT: Thank you Mr. Lemke.

22 MR. HAYDEN: Thank you. Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. HAYDEN:

25 Q. Did you take notes during the initial conversation

McHugh - People - Redirect

1 with the defendant?

2 A. Yes, I did.

3 Q. How many pages of notes?

4 A. I took two.

5 Q. Did Detective McGinn take notes?

6 A. Yes, he did.

7 Q. How many pages?

8 A. Six.

9 Q. Have you reviewed all of those notes before
10 testifying today?

11 A. Yes, I have.

12 Q. Many times?

13 A. Yes.

14 Q. Now, you testified during cross examination that
15 the defendant never told you that Herva Jeannot did anything
16 that night; is that right?

17 A. That's correct.

18 Q. Not involved with the shooting?

19 A. Correct.

20 Q. He told you Herva Jeannot was not involved in the
21 shooting; is that right?

22 During that initial conversation, you took the statement,
23 he told you that Herva Jeannot had nothing to do with the
24 shooting?

25 A. No, he didn't tell me that.

McHugh - People - Redirect

1 Q. During the initial conversation, he told you he was
2 with Herva Jeannot?

3 A. Right.

4 Q. Herva was with him?

5 A. Correct.

6 Q. He provided an alibi for Herva Jeannot?

7 A. Yes, he did.

8 Q. He told you Herva Jeannot had nothing to do with
9 this; is that right?

10 A. Yes.

11 Q. During that initial conversation, that is what I am
12 talking about, the conversation with you and Detective
13 McGinn, he supported an alibi for Herva Jeannot?

14 A. Yes, he did.

15 MR. HAYDEN: Nothing further, Your Honor.

16 RECROSS EXAMINATION

17 BY MR. LEMKE:

18 Q. He provided an alibi. Is that your testimony now,
19 detective?

20 A. That he provided an alibi for Herva Jeannot?

21 Q. Is that what you just testified to?

22 A. Yes.

23 Q. And so by telling you that he went there, he met
24 Bobby, he was there at the time of his death, that Herva was
25 with him, that is an alibi?

McHugh - People - Recross

1 MR. HAYDEN: Objection. Didn't say he was
2 with him at the time of the death.

3 THE COURT: Sustained.

4 Q. That was an alibi, detective?

5 A. The meeting that took place at a different
6 location, the victim's after he left him, and the events
7 after that, after they left Island Park and throughout that
8 evening.

9 Q. Then three hours later, he certainly didn't give an
10 alibi, did he?

11 MR. HAYDEN: Objection.

12 THE COURT: Sustained. Sustained.

13 Q. You're familiar with the statements that he gave to
14 Cereghino, aren't you?

15 A. Yes.

16 Q. And, as you testified here, you didn't believe his
17 first statements, clearly a lie?

18 A. Yes.

19 MR. LEMKE: Thank you.

20 THE COURT: Anything further from this
21 witness.

22 MR. HAYDEN: No, Your Honor.

23 THE COURT: You may step down. Thank you,
24 detective.

25 (Witness excused.)

McHugh - People - Recross

1 THE COURT: At this time everybody in the
2 gallery, going to take fifteen minutes, intend to resume
3 just about noon. Let everyone use the facilities or
4 whatever. Remember my admonitions throughout, all apply
5 here, particularly, do not converse among yourselves or
6 with anyone else about the subject matter of this case.
7 Follow the officer, please.

8 THE COURT OFFICER: Leave your pads on the
9 seat if you're taking notes.

10 THE COURT: I intend to resume at noon.

11 (Whereupon, there was a recess in the proceedings.)

12 THE CLERK: Continued case on trial.
13 167N-2005.

14 People of the State of New York against Mark
15 Orlando.

16 Let the record reflect the jury is not in the
17 courtroom at this time.

18 THE COURT: Mr. Lemke, did you want to be
19 heard with regard to some anticipated testimony that is
20 about to be elicited.

21 MR. LEMKE: There has been a prior ruling by
22 this Court with the testimony at this time and the
23 anticipated testimony of Detective McGinn, that there's
24 a period during his conversation with Mr. Orlando that
25 he brings into focus what the codefendant Mr. Herva

Proceedings

1 Jeannot had said regarding the shooting of Mr.
2 Calabrese. That there was payment for that and a number
3 of other things.

4 I believe it's been limited by this Court, to a
5 conversation with my client, that McGinn can testify
6 that Herva had said he shot Mr. Calabrese, and that my
7 client had paid him. I am certainly placing my
8 objection to that on the record now. I believe there's
9 still going to be a curative instruction by this Court.
10 I will ask that be read to the jury, but I just wanted
11 my objection so noted. I will not object in front of
12 the jury, but I am placing my objection on the record
13 now.

14 THE COURT: Your objection is noted. There
15 will be a curative instruction, it will be a limiting
16 instruction to the jury that any testimony in that
17 regard will not be offered for the truth of the contents
18 therein, but rather explain to the jury what is going on
19 during the interrogation of your client.

20 Is that it?

21 MR. LEMKE: Yes, Your Honor.

22 THE CLERK: Ready for the jury, Your Honor?

23 THE COURT: Yes.

24 THE COURT OFFICER: Ready for the jury?

25 THE COURT: Yes.

Proceedings

1 THE COURT OFFICER: Jury entering.

2 THE CLERK: Continued case on trial,
3 167N-2005, People versus Mark Orlando.

4 People ready to proceed?

5 MR. HAYDEN: Ready, Your Honor.

6 THE CLERK: Defense ready?

7 MR. LEMKE: Ready.

8 THE CLERK: Let the record reflect the
9 presence of Mr. Orlando and the jury and alternates.

10 THE COURT: Good afternoon. We're going to go
11 another half hour then I will break for lunch.

12 Call your next witness.

13 MR. HAYDEN: James McGinn.

14 JAMES MCGINN, detective, called as a witness on behalf of the
15 People, after having been first duly sworn, and having
16 stated his shield number as 785, and his command as
17 Homicide Squad, Nassau County Police Department, took the
18 witness stand and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HAYDEN:

21 THE CLERK: Have a seat.

22 State your name, spell your last name, give your
23 shield number and command.

24 THE WITNESS: Detective James McGinn,
25 M-C-G-I-N-N, shield number 785, Homicide Squad, Nassau

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McGinn - People - Direct

1 County Police Department.

2 THE COURT: Good afternoon, detective.

3 Just speak into the mike.

4 Mr. Hayden.

5 MR. HAYDEN: Yes, Your Honor.

6 Q. Good afternoon, detective.

7 A. Good afternoon.

8 Q. How long have you been a member of the Nassau
9 County Police Department?

10 A. Eighteen years.

11 Q. How long have you been a detective?

12 A. Twelve years.

13 Q. How long with homicide?

14 A. Four years.

15 Q. Do you know a man named Mark Orlando?

16 A. Yes, I do.

17 Q. Briefly describe him?

18 A. He's a male white, approximately 5'10", about three
19 hundred and fifty pounds, thirty-four years of age.

20 Q. Do you see Mark Orlando in this courtroom today?

21 A. Yes, I do.

22 MR. LEMKE: So stipulated, Your Honor.

23 THE COURT: Let the record reflect the witness
24 has identified the defendant as Mark Orlando.

25 Q. I am directing your attention to the night of

McGinn - People - Direct

1 Thursday, December 9, 2004.

2 Were you involved that night in arresting the defendant?

3 A. I was present when he was arrested, yes.

4 Q. Who arrested the defendant?

5 A. Bureau of Special Operations, Police Officer
6 Loschiavo and McCarthy.

7 Q. When was he arrested?

8 A. He was arrested at ten minutes to nine in
9 Farmingdale.

10 Q. Where?

11 A. It was at Airport Plaza Shopping Center in
12 Farmingdale.

13 Q. Was that 9:10 that night?

14 A. Yes, 9:10, yes.

15 Q. Where were you when the Bureau of Special
16 Operations officers arrested the defendant?

17 A. I was in a police vehicle just behind the Bureau of
18 Special Operations vehicle.

19 Q. Were you watching while he was arrested?

20 A. Yes.

21 Q. Was he handcuffed when he was arrested?

22 A. Yes, he was.

23 Q. What did the Bureau of Special Operations officers
24 do with the defendant?

25 A. After he was arrested, he was turned over to

McGinn - People - Direct

1 Detective McHugh and myself.

2 Q. What did you do with him?

3 A. We placed him in the back of our police vehicle.

4 Q. Describe that vehicle?

5 A. It's a 1997 tan Ford Expedition.

6 Q. Where did you take the defendant?

7 A. We took him to police headquarters in Mineola to
8 the homicide squad.

9 Q. Who drove?

10 A. I did.

11 Q. Where was Detective McHugh?

12 A. Sitting directly behind me in the rear seat.

13 Q. Where was the defendant?

14 A. Next to Detective McHugh on the passenger's side of
15 the rear seat.

16 Q. Describe any conversation on the way to police
17 headquarters?

18 A. Detective McHugh introduced himself and I to the
19 defendant, told him we wanted to talk to him about the death
20 of Bobby Calabrese, and that when we got to the office, we
21 would speak to him about it.

22 Q. What did the defendant say?

23 A. I believe he responded okay.

24 Q. What time did the defendant arrive at the homicide
25 squad?

McGinn - People - Direct

1 A. That was 2150 which is ten minutes to ten.

2 Q. Describe the layout of the homicide squad?

3 A. You first walk into it, it's a large office area
4 with desks, pictures, desk for each detective. It has a
5 supervisor's, two supervisors office, and two interview
6 rooms.

7 Q. Where was the defendant placed at the homicide
8 squad?

9 A. He was placed in the main interview room which is
10 the southeast corner of the homicide office.

11 Q. Describe that room?

12 A. The room is approximately ten feet by ten feet, has
13 a desk, three chairs, filing cabinet, a window with a curtain
14 on it, a door that closes and locks. The door also has a
15 window with a curtain on it.

16 Q. Was a man named Herva Jeannot arrested that same
17 night?

18 A. Yes, he was.

19 Q. Was he arrested at the vicinity of Professional
20 Credit Services?

21 A. Yes, he was.

22 Q. About 9:15 that night?

23 A. I believe so but I am not sure on that.

24 Q. Was Herva Jeannot brought to the homicide squad?

25 A. Yes, he was.

McGinn - People - Direct

1 Q. What was the approximate time he got there?

2 A. I believe he got there at about twelve minutes past
3 ten.

4 Q. Where was Herva Jeannot place?

5 A. He was placed in the secondary interview room in
6 the homicide squad.

7 Q. Describe that room?

8 A. That room is probably about eight by eight. Again
9 it contains a desk with three chairs and there's also a cot
10 type couch in there.

11 Q. Where is one interview room with relation to the
12 other?

13 A. They're directly across from each other. One is on
14 the east side of the office, the other is on the west side of
15 the office.

16 Q. Did you eventually take part in a conversation with
17 the defendant?

18 A. Yes, I did.

19 Q. Who was present when the conversation began?

20 A. Detective McHugh.

21 Q. Was the defendant handcuffed when the conversation
22 began?

23 A. No, he was not..

24 Q. Did you take notes of your initial conversation
25 with the defendant?

McGinn - People - Direct

1 A. Yes, I did.

2 Q. How many pages of notes did you take?

3 A. Six pages.

4 Q. Would those notes help refresh your recollection
5 about the sequence of the things the defendant said?

6 A. Yes.

7 MR. HAYDEN: May I please have 66A through F
8 for identification shown to the witness, Your Honor.

9 THE COURT: Yes.

10 THE COURT OFFICER: The witness has People's
11 66A through F for ID.

12 Q. Do you recognize those notes?

13 A. Yes, I do.

14 Q. Are those your notes of the initial conversation
15 with the defendant?

16 A. Yes.

17 MR. HAYDEN: With the Court's permission, may
18 Detective McGinn refer to those notes whenever need be
19 to refresh his recollection about the sequence of the
20 things the defendant said?

21 MR. LEMKE: No objection, Your Honor.

22 THE COURT: Yes.

23 THE WITNESS: Thank you.

24 Q. Was the defendant initially informed of his
25 constitutional rights?

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1 A. Yes, he was.

2 Q. Who did that?

3 A. Detective McHugh.

4 Q. How did he do that?

5 A. He did that by reading the rights to the defendant
6 from a police form called PDCN 233. It's a notification of
7 rights.

8 MR. HAYDEN: May I please have 44 in evidence
9 shown to the detective?

10 THE COURT: Yes.

11 THE COURT OFFICER: The witness has People's
12 44 in evidence.

13 Q. Do you recognize that?

14 A. Yes, I do.

15 Q. Is that the card Detective McHugh used to inform
16 the defendant of his constitutional rights?

17 A. Yes, it is.

18 Q. Is your signature on that card?

19 A. Yes, it is.

20 Q. Describe any conversations that took place after
21 the defendant was informed of his constitutional rights?

22 A. We first asked him basically, Detective McHugh
23 asked basic pedigree information which I document such as the
24 defendant's name, Mark Orlando, his address, which was 1119
25 Joselson Avenue in Bayshore, date of birth, which was

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1 7/27/70. We asked for cell phone number, work phone number,
2 home phone number. He provided them. We asked who his
3 employer was, which he told us it was Professional Credit
4 Services, 500 Bicounty Drive, Bicounty Boulevard, Suite 350
5 in Farmingdale, New York. He was asked how long he was
6 employed there. He had been employed there since '99. He
7 was asked who he lived with. He said he resided there with
8 his wife Diana. Her maiden name was Dunn. He supplied her
9 date of birth. Also said he resided with his mother-in-law
10 whose first name was Nellie. And again her last name was
11 Dunn. He was asked about his educational background. He
12 said he had gone to Nassau Community College for about a year
13 and-a-half. Maybe a little bit less. And he majored in
14 accounting there. He also graduated from Holy Trinity High
15 School in 1988. He was asked about his parents, to which he
16 gave the name Mark and Rita Orlando. Gave their home
17 address, phone number.

18 He also talked about being involved in a family
19 business. Regee Silk Creations and also Graham Mirror
20 Manufacturers. They used to have a place in the flee market
21 in Levittown. Also a store in Levittown. He said he had two
22 sisters. Gina and Rita, and that Rita was married to a
23 corrections officer by the name of Michael Goodman.

24 Q. Describe any further conversation?

25 A. Detective McHugh then asked about his relationship

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1 with Bobby Calabrese. Wanted to know how he met Bobby
2 Calabrese, and his relationship with Bobby. He explained to
3 us that he was introduced to Bobby Calabrese by a friend and
4 coworker by the name of Tom Flores. Tom introduced the two
5 of them because he knew that Mark was a gambler and that
6 Bobby Calabrese was a runner for a bookmaker, and that they'd
7 be able to have a business arrangement placing bets. I
8 believe it was the following day or the day after that, that
9 Bobby Calabrese either called Mark Orlando on his cell phone
10 or his business phone and they set up a business
11 arrangement.

12 Bobby Calabrese had supplied Mark Orlando with an account
13 number, a password, an 888 number to place his bets on. He
14 started placing bets with Bobby Calabrese. He did it for
15 about six weeks beginning in October. First week that he
16 gambled with him he won I believe it was \$871. Second week
17 he gambled with him he won about \$1,065. Third week he
18 gambled with him he won about \$8,700. The fourth week he had
19 a very good week. He won \$17,900. I am sorry, the fourth
20 week it \$8,700. Fourth week \$8,700.

21 I am sorry let. Me go through that again.

22 First week was \$870. Second week was \$1,065. Third week
23 was \$8,700. Fourth week was \$17,900. Fifth week he lost
24 \$8,700. And the sixth week he lost \$9,100.

25 He explained that whenever he won that the weekend on a

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1 Sunday and that the wages were either paid or owed sometime
2 that following week most likely on a Thursday. He explained
3 most of it, because he had won, Bobby used to come out and
4 meet him and pay him out by Professional Credit Services. He
5 explained to us that the wages that he lost on the week
6 ending 1/28, payment on that \$8,700 was due on December
7 second. He continued to bet on the twenty-ninth and the
8 thirtieth, which would start a new week. And in those two
9 days is when he lost the \$9,100. That money would not have
10 been due until December ninth. But being that he had lost
11 the \$8,700 and the \$9,100, he voluntarily shut down his line
12 with Bobby Calabrese on the thirtieth. So that he would lose
13 anymore money.

14 He had agreed to meet Bobby Calabrese, he was going to
15 meet him on the second of December to pay, and wanted to pay
16 everything at once, even though \$9,100 of that money wasn't
17 due until the ninth. He wanted to settle everything up. He
18 was going to meet with him on the second of December, but he
19 wound up working a twelve to nine that day. Twelve in the
20 afternoon until nine at night. He wound up going out
21 afterwards with his wife so he didn't meet Bobby Calabrese
22 that day.

23 He said that Wantagh Suzuki owed him money. He was going
24 to Wantagh Suzuki to pick up money on Friday. So, he had
25 called Bobby Calabrese and agreed to meet Bobby Calabrese

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1 down at Island Park either before or after he was going to
2 Wantagh Suzuki. He said that Herva Jeannot took a ride with
3 him. That when they left work on Friday and agreed to meet
4 Bobby Calabrese they went to the gym afterwards. That Herva
5 Jeannot, Mark Orlando, Tom Flores, Barbara Diamant and Rory
6 Hoffman I believe is his name went to L.A. Fitness on 110
7 after work. They weren't meeting Bobby until later on that
8 night.

9 At about 7:15, 7:30, Herva Jeannot and Mark Orlando left
10 L.A. Fitness. They drove down Route 110 to the Southern
11 State Parkway. Southern State Parkway, Wantagh, to the Loop,
12 down Lido Boulevard and into Island Park. He said when he
13 got into the Island Park area, he went directly to Industrial
14 Boulevard where he was going to meet Bobby Calabrese. He
15 said that at about 8:25, he called Bobby Calabrese and told
16 him where he was, and that they were going to meet there.

17 He was only there a few minutes when Bobby Calabrese
18 pulled up. He said he was sitting in his car with Herva and
19 Bobby pulled up in his car. It was either an Infiniti or
20 Lexus. They pulled side by side, driver's door to driver's
21 door. He said they talked for a couple minutes, that the
22 money was exchanged, he gave Bobby the \$17,000 even though, I
23 believe, the total debt was \$17,000, either eight hundred or
24 one hundred, one of the weeks Bobby Calabrese had paid him he
25 was short some money. So, Bobby Calabrese still owed him

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1 money. So, the total debt he was paying that night was
2 \$17,000. He said he paid the \$17,000.

3 They talked for a minute. He said Bobby pulled out.
4 Bobby made a left on Austin Boulevard, went towards
5 Oceanside. He pulled out of Industrial Place, made a right
6 on Austin Boulevard and went back into Long Beach to get back
7 onto the Loop Parkway.

8 He was asked if he had called anybody after he left the
9 Island Park area and he said between 8:40 and nine o'clock he
10 had called Wantagh Suzuki because he wanted to make sure that
11 his check was there. He also called I believe his wife. He
12 called Vivian Borushik, a friend of his, because they were
13 going to go over there after Wantagh Suzuki, and he called
14 Tom Flores. He said when he called Wantagh Suzuki, he always
15 dealt with the owner Ralph down there. That Ralph wasn't in
16 and he had told the workers he wanted his check. He was on
17 his way down there. They got down there a little bit late.
18 Said he got there a minute after nine. The place was
19 closed. So, he couldn't pick up his check.

20 From Wantagh Suzuki they drove to the CitiBank on Sunrise
21 Highway and he withdrew \$300 from the ATM machine. He said
22 it was exactly 9:12 he withdrew the money from the ATM
23 machine. Said he doesn't normally save the ATM receipts, he
24 doesn't normally save his receipts, but that night he saved
25 the receipt and he believed it was in his desk somewhere at

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1 work.

2 He said after they left the CitiBank ATM machine, they
3 got onto 135 which is the Seaford/Oyster Bay Expressway and
4 drove over to Vivian's house. Once at Vivian's house he said
5 that Herva stayed in the car, and he went into Vivian's house
6 for about thirty or forty minutes. He was over Vivian's to
7 look at some work that was done. I believe Vivian had a pool
8 installed, and he was looking at the distance between the
9 fence and the pool. There was a deck there I think needed to
10 be taken care of and some brick work that needed to be done,
11 and he went over there to look at that. Said they were over
12 there thirty, forty minutes. He then went out to the car
13 where Herva was. He then drove Herva home.

14 He said when he left Bobby Calabrese, Bobby Calabrese was
15 fine. He said that the following morning, I believe it was
16 around ten o'clock he was home, he got a phone call from Tom
17 Flores. Tom Flores told him that Bobby Calabrese was dead.
18 He didn't say what happened to him or how he was killed, but
19 that Bobby Calabrese was dead. Mark Orlando told him to
20 reach out to the Calabrese family to give him his phone
21 number because he was probably the last person to see him
22 alive. That he wanted to get out in front of this to let the
23 family know he wasn't involved in this and that when he saw
24 him he was fine and they left the area.

25 There were numerous phone calls that morning. Barbara

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1 Diamant who was Tom Flores' girlfriends also called Mark
2 Orlando at home to tell him that Bobby Calabrese had been
3 killed. With all of the phone calls that were coming into
4 the house, Mr. Orlando told us his wife now knew he was
5 gambling begin with a bookmaker and she became very upset and
6 told him if she wasn't pregnant with his child she would
7 leave him over the gambling.

8 Q. Describe any further conversation?

9 A. We talked in depth about the gambling. He was very
10 enthusiastic when talking about the gambling. I also asked
11 him to elaborate on the situation at Wantagh Suzuki. Why
12 they owed him money. Why it was important for him to pick up
13 that check. He started to explain about the cars he had
14 purchased from Wantagh Suzuki started to get a little
15 confusing. So, I asked him to slow down, and we went into
16 it. He said the first car he purchased from Wantagh Suzuki
17 was a 2004 Verona. He had traded in a '98 Navigator for that
18 car. Then the second car he purchased from them was 2001
19 Ford Expedition. He had that for a couple of months, but
20 the gas prices hit and it was just too expensive, so, he
21 traded the Expedition in for a Suzuki XL7. He kept the
22 Suzuki OX7 for a short period. I believe it was a week or
23 two. And he was like, look at the size of me. The Suzuki
24 LX7 just didn't fit me. The truck was too small for me. So,
25 he traded that back in and then I also traded in the first

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1 2004 Verona he purchased from them for an updated one. When
2 he did that, he just gave them back the XL7. Only had the
3 2004 upgraded Verona that his wife drives now.

4 He said in the confusion and stuff that he started
5 getting phone calls from Norfork Bank and from American
6 Suzuki and they had asked him what car he was making payments
7 on. He said e only had one car from them and he only needed
8 to make payments on one car. He felt there was something
9 wrong and he was dealing with Ralph, the owner at Suzuki. In
10 the meantime, he attempted to refinance his house to get a
11 better rate and he found out he couldn't do it. He wanted to
12 restructure at the time and get a better rate. He found out
13 he couldn't refinance because his credit rating had been
14 messed up by Wantagh Suzuki. He had worked out a deal with
15 Ralph from Wantagh Suzuki that they would give him a check
16 for \$1,600, and that they would give him a letter to clear
17 his credit rating.

18 Q. What else did he say?

19 A. We talked about his debts. I asked him about his
20 debts. He said he had about ten outstanding debts. He had a
21 mortgage. The mortgage was about \$307,500 of which his
22 states were \$1,729 a month. Additionally he had to pay
23 \$3,200 a year in taxes. He also had the car payment. He
24 owed about \$19,000 on the car. That payment was \$399 a
25 month. He had a debt with an MBNA credit card, \$14,000

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1 payment on that being \$400 a month. He had another debt with
2 CitiBank which was around \$4,500 on the credit card. That
3 payment was \$300 a month. He also had a \$25,000 loan over
4 twenty years he took out for a pool he had in his yard. That
5 was about \$259 a month.

6 When he was asked about going down to Island Park, how he
7 knew that area, he said his best friend's wife lived on
8 Knickerbocker which was right around the corner from there.
9 His father used to work in Oceanside. He knew the area. His
10 father used to own a body shop called Bilmar in Island Park.
11 He said his wife grew up in the Island Park/Long Beach area.
12 He knows that area. He wasn't lost down there. He drove
13 right to Industrial Boulevard and parked and waited to meet
14 Bobby.

15 He was asked about any bank accounts he had, he has. He
16 said he has a joint account at CitiBank on Conklin Avenue in
17 Farmingdale with his wife. He also has an individual bank
18 account at CitiBank. He said some of the money from his
19 gambling winnings went into the those bank accounts to pay
20 some credit card debt.

21 He was asked about gambling records. He said he probably
22 has some gambling records left in his desk. He stated that
23 when they were on Industrial Place there was a shop that was
24 open down there. When he was asked why he took his car down
25 there, I mean his wife's car down there, the Verona, because

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1 he was now driving a '91 Cougar, he said he didn't have a
2 license and with the tinted out windows on his '91 Cougar it
3 looked like a crack head's car. He didn't want to get pulled
4 over because he didn't have a license.

5 Q. Talk about the ten separate debts?

6 A. He said he had about ten outstanding debts but just
7 went into the ones I talked about.

8 Q. What else did he say?

9 A. He said he had driven Herva home, when they were in
10 front of Herva's house, Herva had called his girlfriend from
11 in front of house at about 10:30 and that he had called his
12 wife.

13 Q. Anything else?

14 A. No, I believe that is about it from the initial
15 interview.

16 Q. Did the defendant take notes during the course of
17 the conversation?

18 A. Yes. Not so much take notes, but when he was
19 explaining things in the beginning of the interview, there
20 was a pad on the table. He asked for a pencil. When he
21 started talking about the gambling and he wrote out
22 explaining everything to us, as he explained it he was
23 writing things down.

24 MR. HAYDEN: May I please have People's
25 exhibits 49A through D shown to the witness, Your Honor.

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1 THE COURT OFFICER: The witness has People's
2 49A through D for identification.

3 Q. Do you recognize those notes?

4 A. Yes, I do.

5 Q. Are those the defendant's notes?

6 A. Yes, they are.

7 Q. Using those notes in evidence, describe for the
8 jury what the defendant was saying while he was taking those
9 notes?

10 A. As he was taking those notes, he is writing out six
11 weeks, he knows Bobby for six weeks. Started talking about
12 the gambling. He is listing weeks one through five on here
13 as to how much he was winning and losing, he put his password
14 and his account number down on here. He was talking about
15 how you bet on different games. There was one point in the
16 conversation where we were talking about the gambling and
17 about sports. Detective McHugh said he was a bit of a sports
18 enthusiast. Mr. Orlando must not be a real good gambler. He
19 said he bet on pro football, college football and pro
20 basketball.

21 Detective McHugh says, you know, a good gambler never
22 bets on the final score of, never bets on basketball because
23 it could be, the outcome of the game could be affected, one
24 team doesn't care if the other team scores a few points
25 because you're not going to cover your point spread. Mr.

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1 Orlando said he didn't know what he was talking about because
2 you never bet on the final score. You bet on different, you
3 bet on the quarter score, the half time score, the
4 over/under. That was all. Did it different. Things he
5 demonstrated over here.

6 Again, on the back of that one page, he was writing out
7 the weeks and explaining to us how the weeks worked with the
8 gambling. He wrote out the last week where he started, or
9 the first week where he started to lose money, and that was,
10 that was the twenty-sixth through twenty-sixth,
11 twenty-seventh and twenty-eighth. He showed us that the week
12 ends on the twenty-eighth and a new week begins on the
13 twenty-ninth which would be a Monday. So, when he lost in
14 week five, he lost the \$8,700, that that payment would be due
15 on the second of December. Then the new week starts,
16 whatever is won or lost in that week, which would be the
17 twenty-ninth and the thirtieth, or all the way up through the
18 third of December would not be due, payment, whether he was
19 receiving payment or had to make a payment, that wouldn't be
20 due until the ninth of December.

21 He showed us, he circled the last two dates that he bet,
22 which was the twenty-ninth and the thirtieth, in which those
23 two days he lost \$9,100 in those two days. He said on the
24 thirtieth, that is when he shut down his line, because he
25 didn't want to lose any more money.

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1 Q. What page is that?

2 A. It's on the back of exhibit number 49A.

3 Q. Would you move on to 49B, please. Tell us what he
4 was saying as he was taking those notes?

5 A. On 49B, he is explaining, I believe he worked eight
6 to five that day. They went to L.A. Fitness. They were
7 there, there were five people that went to L.A. Fitness.
8 Wrote down the names of the people that went. Barbara
9 Diamant, Tom Flores, Herva Jeannot and Rory Hoffman. Got
10 down one ten, something about Ruby Tuesdays. I don't
11 remember that. He says 7:15, & 30 they left. They went down
12 Route 110 to the Southern State Parkway to the Wantagh
13 Parkway, to the Loop Parkway to Lido Boulevard. At about
14 8:25 he goes to Industrial Boulevard. He actually draws a
15 diagram of Industrial Boulevard and where certain places
16 are. The public storage on Industrial Boulevard. I believe
17 it's a restaurant that was shut down. And I believe it's
18 Puma's auto body that he wrote. And actually drew a little
19 map where the street was and where he was parked and where he
20 met, where he said he met Mr. Calabrese.

21 Q. Would you move on to the next page, please.

22 A. Next page is, I believe, this is a little map or a
23 diagram of Vivian Borushik's backyard, where the pool was,
24 where the fence was, how close it was to the fence and stuff.

25 THE COURT: What exhibit is that?

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1 THE WITNESS: That is exhibit 49C.

2 THE COURT: Thank you.

3 A. Again there's a Friday eight to five. I believe he
4 said he was working Friday eight to five on that. He's got
5 12/4 date and 12/3 date. The 12/3 date being the date he
6 paid the money, and the 12/4 being the date he's told about
7 Bobby Calabrese's death.

8 Q. Would you move on to the next page, please?

9 What is that for the record?

10 A. That is 49D, and it has Wantagh Suzuki. It's got
11 it circled. Says close. It says Vivian Borushik in
12 Plainview. It also has the ATM CitiBank on Sunrise. I am
13 not sure what some of that writing is. And then again it's
14 got 9:12, which is the time he says he withdraw the money
15 from the ATM and he has that circled. And then he has 135
16 again to Plainview which is the route they took to Vivian
17 Borushik's house.

18 Q. Told you that time?

19 A. Yes.

20 THE COURT: I think at this time I am going to
21 break because of the hour.

22 Ladies and gentlemen in the gallery, please remain
23 seated until the jury leaves the courtroom.

24 We're going to break, ladies and gentlemen, to
25 2:15. Okay. You must not converse among yourselves or

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1 with anyone else upon any subject connected with the
2 trial. You must not read or listen to any accounts or
3 discussion of the case in the event it is reported by
4 news or other media. You must not visit or view the
5 premises or place where the offenses charged was
6 allegedly committed, or any other premises or place
7 involved in the case. Prior to your being discharged
8 you must not request, accept, agree to accept, or
9 discuss with any person the receiving or accepting of
10 any payment or benefit in consideration for supplying
11 any information concerning the trial. You must promptly
12 report to the Court any incident within your knowledge
13 involving an attempt by any person improperly to
14 influence any member of the jury. You're not to access
15 the Internet or Worldwide Web by any means available to
16 you for the purposes of either learning about this case
17 or to learn about the law and legal issues concerning
18 this case.

19 Have a nice lunch.

20 THE COURT OFFICER: Please leave the note pads
21 on your chairs and follow me out.

22 THE COURT: Detective, you may step down. We
23 will resume at 2:15. Don't discuss your testimony with
24 anyone.

25 THE WITNESS: Okay.